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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (C.) 3032/2020 & C.M. No. 10552/2020

KARAN SETH

..... Petitioner

Through: Mr. Darpan Wadhwa, Senior Advocate and Mr. Arjun Syal, Ms. Manjira Dasgupta, Ms. Mithu Jain, Ms. Vidisha Kumar, Mr. Akhyil Wahal, Advs. with petitioner in person.

versus

UOI AND ORS.

..... Respondents

Through: Ms. Anjana Gosain & Ms. Himanshi Aggarwal, Advocates for the respondent No.1/ UOI.
Mr. Anand Varma, Advocate for the respondent/AIIMS.
Mr. Rahul Mehra, Standing Counsel with Mr. Chaitanya Gosain & Mr. Gautam Narayan, Ms. Shivani Vij
Mr. Parvinder Chauhan, Advocate along with Mr. N.H. Sharma, Director (Night Shelter Home), for the respondent/ DUSIB.
Mr. Vaibhav Pratap Singh, Advocate for and along with Ms. Rachna Malik/ proposed proforma respondent.

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HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

27.05.2020

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1. On the last date of hearing, several aspects had been raised by the petitioner and Ms. Rachna Malik with regard to the functioning of night shelter being run by DUSIB within the precincts of Vishram Sadan, AIIMS. Since there was a divergence in the versions put forward by Ms. Malik and Mr. Chauhan – on instructions from Mr. N.H. Sharma, Director, Night Shelter, we requested Mr. Malik – husband of Ms. Malik, to proceed to the said night shelter and to report on several aspects on which there was a dispute. We asked him to prepare video recordings of whatever he finds during his visit. In pursuance to the said direction, Ms. Rachna Malik has filed a report and has also placed on record the video recordings made by Mr. Malik. On the other hand, DUSIB has also placed its report with its own video recordings.

2. We have perused the same. What emerges from the reports and the video recordings is that the shortcomings pointed out by Ms. Malik in relation to lack of water, which was leading to unhygienic sanitation conditions; lack of drinking water; lack of record being maintained of the persons/visitors visiting the night shelter home, are correct. The version projected by Mr. Sharma, on the last date, in respect of the aforesaid aspects does not appear to be correct and we reject the same. What has emerged

before us is that, admittedly, the water line to supply water to the night shelter was practically non - functional due to certain defects in the water pumping system. These defects were not remedied. DUSIB claims that the said defects have now been remedied. Ms. Malik states that consequent to the passing of the last order, the authorities had swung into action, and they have cleaned the toilets, and made available all the toilets for the occupants of the night shelter, which was not the case earlier. She also states that water dispensers have been installed in the night shelter so that the occupants do not have to fend for themselves to get drinking water. So far as maintenance of the record of visitors is concerned, though DUSIB has claimed that it is maintain registers, and some of the copies of those registers have also been placed on record, we are not convinced that the said registers are being maintained with any regularity, or seriousness. In fact, from the videograph made by Mr. Malik, it appears that a lady, who is not in a uniform, was manning the gate and she stated that the register is not being maintained since the lockdown. Ms. Malik has clarified that the lady, though not in uniform, is the security guard at Vishram Sadan entrance. There is no separate security arrangement made for the night shelter/*rain basera*. Pertinently, even though Ms. Malik has been regularly visiting the

night shelter, even her entries are not to be found in the said register.

3. Though it appears that after the passing of our last order the senior officials of DUSIB, as well as the Chief Secretary, Delhi, have become alive to the problems highlighted by us, and corrective steps have been taken, our apprehension is that the situation may again go back to what it was, once Court's monitoring stops.

4. We are, therefore, of the view that a system should be put in place where sufficient checks and vigilance is maintained with regard to maintenance of facilities at the night shelters in question, and other night shelter being run and managed by DUSIB in the NCT of Delhi. There are a large number of NGOs and good Samaritans like Ms. Malik, who are offering social service, only for the love of mankind, at such like night shelters. They would be, obviously, interested in seeing that such like facilities are run efficiently and the occupants are provided the facilities and services which are necessary to maintain human dignity.

5. We, therefore, direct DUSIB to accredit NGOs and individual social workers who are associated with the night shelters, and to involve the NGOs and individual social workers in the matter of supervision of such like night shelters. Any grievances, complaints or suggestions that DUSIB may

receive in respect of any of its night shelters from such NGOs, or social workers, should firstly be taken on record and actioned without any delay. All such aspects should be brought to the notice of the CEO of DUSIB within a day of the complaint/suggestion being received. DUSIB shall set up/create a cell, wherein such like complaints/ suggestions could be lodged and diarised. For the night shelter in Vishram Sadan complex of AIIMS, Ms. Rachna Malik shall be accredited. This process should start within the next three working days, and should be completed within a week thereafter.

6. So far as Mr. Sharma is concerned, we are sorry to say that on the last occasion he did not correctly project the position before us as already taken note of herein above. This aspect should be brought to the notice of the CEO of DUSIB, and we leave it to him to consider what action, if any, needs to be taken in that respect.

7. Ms. Malik has pointed out that in the night shelter in question, even basic facilities like hand sanitizers/ liquid soap dispensers have not been provided. Mr. Chauhan has assured this Court that hand sanitizers would certainly be provided without any delay. Let the same be done within one day. We direct that liquid soap dispensers be also provided in the night shelter at AIIMS. The said facilities be also made available in other night

shelters run by DUSIB within this week.

8. Mr. Wadhwa has suggested that to ensure that proper hygiene and other conditions are maintained at the night shelter, the AIIMS could make visits to supervise the same, and report any shortcomings in the matter of hygiene, etc. Mr. Varma states, on instructions that the AIIMS would be willing to undertake the supervision of the night shelter, managed by DUSIB, by following the same Standard Operating Procedure (SOP), as is applicable to the Vishram Sadan. He has pointed out that the Vishram Sadan is being used as a shelter, not only by the patients who are being treated at AIIMS and by their attendants, but also by others, who are not receiving any treatment, or those who are not receiving such treatment on a regular basis.

9. Mr. Chauhan has submitted that the night shelters being run by and supervised by DUSIB cater to not just patients and their attendants, but other homeless people as well. Whatever may be the position with regard to other night shelters being managed by DUSIB, the night shelters which are situated in the vicinity, or within the presincts of the area of a Government hospital, stand on a different footing. This is because such night shelters are primarily created to cater to the needs of the patients receiving treatment at

such Government hospitals. It is well known that patients travel hundreds and thousands of kilometres to avail of treatment facilities at places, such as AIIMS. Many of them are poor and cannot afford to hire any accommodation in Delhi. It is for persons like these, that night shelters are created in areas around hospitals. To permit others to occupy these night shelters, who may not be patients receiving treatment/ or are their attendants, would deprive other needy persons who are suffering from ailments and receiving treatment at the concerned government hospital, of such facilities. We, therefore, direct DUSIB to ensure that only patients and their immediate attendants are permitted to occupy the night shelters at AIIMS, and other night shelters in the vicinity of other Government hospitals in Delhi. All other occupants, who are not receiving treatment at the concerned Government hospital, should be shifted to the other night shelters managed by DUSIB. If there are patients and their attendants, who require visits to the Government hospital occasionally, they should be shifted out of such like night shelters to night shelters where they could be accommodated, and transport facilities should be made available to them, so that they could visit the Government hospital concerned as and when they are granted appointment, or they need to visit the hospital.

10. Mr. Varma has also stated that AIIMS could take over the night shelter in the Vishram Sadan complex, and manage the same like the other Vishram Sadans to the exclusion of DUSIB. In our view, looking to the geography of the place, and the fact that the other Vishram Sadans situated within the same precincts are being managed by AIIMS, this suggestion appears to be constructive. We direct the competent authorities at AIIMS and DUSIB to discuss this issue and arrive at an understanding on all aspects, including the financial aspects. The decision be taken in this regard shall also be placed on record.

11. Ms. Malik has expressed the apprehension that persons who came on record to highlight the actual position on ground, and she herself and her husband may be targeted, and that she and her husband may be prevented from proceeding to the night shelter to render social service. We may only state that Ms. Malik, or Mr. Malik, or – for that matter, any social worker, who goes to such like night shelters, does so only to render social service to that strata of society who do not have a voice. Their efforts have to be appreciated and lauded by all. We, therefore, hope and expect that the officers of DUSIB, including Mr. Sharma, would appreciate the contribution made by Mr. & Ms. Malik in the right perspective, as they do not have

anything personal against any officers of DUSIB. All that they have done is to highlight the shortcomings in the management of the night shelter of DUSIB. We, therefore, do not expect Mr. & Ms. Malik, or any inmate of the night shelter who came on record to disclose the prevailing position, to be targeted in any way. At the same time, we make it clear to the respondents, that if any grievance is raised in this respect – which is found to be correct, we would not hesitate to take strict action, including initiation of criminal contempt proceedings against the concerned officials.

12. Ms. Malik had, on the last date, raised the aspect of the access to the night shelter being through the Vishram Sadans. We have viewed the videographs and studied the site plan placed before us. We find that the night shelter is located at the rear end of the complex which houses the Vishram Sadans and the night shelter. The passage from the main road to the night shelter goes around the Vishram Sadans, and one does not have to pass through the covered buildings of the Vishram Sadans. There is a rear entry gate as well, which is used for the purpose of entry of vehicles.

13. Ms. Malik has made a suggestion that the rear entry be permitted to be used for entry and exit of the occupants of the night shelter, and also for the visitors. We are not inclined to agree with the said suggestion, since the said

entry opens into the residential areas of the AIIMS doctors and other officers. To agree with the suggestion of Ms. Malik would cause inconvenience and nuisance to the residence of the said complex.

14. Ms. Malik has pointed out that even though the Covid Test report of Gaya Prasad was awaited, which later turned out to be positive, his mother was allowed to leave the night shelter and proceed to her home without testing. Even in respect of another occupant/ patient, namely Jitender, she states that despite him being found COVID-19 positive, he was not quarantined, and he continued to reside in the night shelter, which led to COVID-19 infection amongst many other inmates of the night shelter. This aspect raises a serious concern. Ms. Malik may file an affidavit giving particulars of when Gaya Prasad and Jitender were tested; when their test reports of COVID-19 as positive were received; when the mother of Gaya Prasad left and; when these two persons were quarantined. The affidavit with supporting documents that she may possess be filed within 5 days. We direct the respondents DUSIB and GNCTD to respond to the same within 5 days thereafter with supporting affidavit.

15. As noticed by us in the last order, only 51 of the inmates of the night shelter were tested for Covid, even though there were in excess of 90

persons residing in the night shelter, where the said Jitender and Gaya Prasad were living. We had asked the respondents to provide justification for the same. It has come out from the status report and the documents placed on record, that the said 51 persons were the patients who were undergoing treatment at AIIMS. It appears that only the patients were tested, and not their attendees. Mr. Mehra has referred to the affidavit filed by the GNCTD to state that while deciding to test the 51 persons, the guidelines of ICMR were adhered to. The said guidelines, namely ICMR Guidelines Version 5, dated 18.05.2020 have been annexed as Annexure B. Point 5 of the said guidelines is relied upon by Mr. Mehra, which reads as follows:

“5. Asymptomatic direct and high-risk contacts of a confirmed case to be tested once between day 5 and day 10 of coming into contact.”

16. In our view, firstly, the same does not explain as to how only 51 patients were tested, and not all the occupants of the night shelter. Secondly, the manner in which the said clause has been understood is not correct. We say so, because both Jitender and Gaya Prasad were living in the same night shelter, as others, on a continuous basis. It is not that the other occupants of the night shelter came in contact, on or after the day on

which the said two persons were tested, and found to be Covid positive. Therefore, these two persons, after they caught the infection themselves, could have transmitted the same to the other occupants of the night shelter, while they were Asymptomatic themselves from day one. The failure to test all the occupants of the night shelter, who were more than 90 in number, may have led to a further outbreak of the viral disease amongst many other persons with whom they may have come in contact.

17. We are also informed, in the meantime, all the occupants of the night shelter have been tested for Covid-19 and the test results are awaited. We direct the respondents to ensure that all such occupants of the night shelter, who are found Covid-19 positive, are quarantined so that they do not infect others, who may have not got the infection yet. We direct the Health Department of the GNCTD to look into this aspect so that such like situations do not recur in future.

18. In our last order, we had also noticed that the 20 odd persons – who were found Covid positive, in addition to Jitender and Gaya Prasad, were shifted to the hospitals of the GNCTD, and not to the dedicated COVID facility created by AIIMS itself, even though, they were since before receiving treatment for other non-COVID ailments at AIIMS. On this

aspect, on the one hand, Mr. Mehra, as an officer of the Court, raised the grievance that AIIMS is not within the access of the common man. According to him AIIMS is turning away the Covid-19 positive patients, unless they are well connected and influential. On the other hand, Mr. Varma, who appears for the AIIMS, has vehemently countered this impression of Mr. Mehra. He has referred to the report filed by AIIMS. He points out that AIIMS admits any person who reports at the emergency, and is found Covid positive and, in case, the person requires hospitalisation, and home quarantine is not sufficient to deal with his condition.

19. From the affidavit of the GNCTD, it is seen that the persons who were found Covid positive from amongst the residents of the night shelter, were admitted to the hospitals of the GNCTD and not at AIIMS, for the reason that the decision to shift them to a hospital had been taken in the night, and at that hour, the authorities at AIIMS were not available.

20. The GNCTD has explained in its affidavit that due to the inability to contact the AIIMS authorities at the relevant time, the patients were shifted to LNJP Hospital and Rajiv Gandhi Super Speciality Hospital.

21. On the other hand, Mr. Varma vehemently disputes this position and states that nobody from the GNCTD contacted any officer of the AIIMS.

He submits that these patients could have reported at the emergency (which they did not) and, thereafter, they would have been admitted to one of the AIIMS facilities if they were found COVID-19 positive, depending on their condition.

22. It appears to us that there is lack of communication protocol between AIIMS and GNCTD. This issue can be resolved by both AIIMS and the GNCTD nominating their respective Nodal Officers, whose contact details, including email ids and mobile phone numbers should be exchanged between them. Any communication between AIIMS and GNCTD in relation to Covid-19 patients should be addressed to the Nodal Officers of the other party. Let the particulars of the Nodal Officers be exchanged between AIIMS and the GNCTD during the course of the day. It goes without saying that cases of COVID-19 positive patients, where co-morbidity exists, would be of urgent nature. We expect both AIIMS and the GNCTD to respond to the correspondences that they exchange, without any delay.

23. From the status report, it also appears that the said 20 patients, who were admitted to LNJP Hospital and Rajiv Gandhi Super Speciality Hospital have since been shifted to the Jhajjhar Facility of AIIMS. Mr. Mehra states

that the condition of Gaya Prasad and Jitender is serious, and they could not be shifted to AIIMS.

24. Mr. Mehra submits that the said 20 patients should not have been sent to the AIIMS Jhajjhar complex and should have been admitted at the Trauma Centre COVID-19 facility, considering the fact that they were receiving treatment at AIIMS since before.

25. Mr. Varma submits that AIIMS has created two separate facilities, namely Trauma Centre at AIIMS main complex, and at the National Cancer Institute at AIIMS Jhajjhar Complex to deal with COVID-19 positive patients.

26. The AIIMS has taken a policy decision that the more serious cases of Covid-19 are treated at the Trauma Centre, whereas the milder cases are shifted to the Jhajjhar Facility. It is in pursuance of the said policy that 20 odd patients of Covid-19, who were living at the night shelter have been shifted to Jhajjhar.

27. We direct AIIMS to look into the case history of each of these 20 persons who have been admitted to the AIIMS COVID-19 facility at Jhajjhar, and take a case by case decision, whether any of them should be shifted to the AIIMS Trauma Centre, looking to the co-morbidity that these

patients have due to their pre-existing illnesses. The risks that such patients have, of their conditions worsening, due to the co-morbidities that each of them may be suffering from, be also considered. If, after examining the conditions of these 20 patients, it is considered that they, or any of them, would be better managed at the Trauma Centre facility, appropriate action for shifting such of the patients to the Trauma Centre, AIIMS be taken without any delay.

28. Mr. Vaibhav Pratap Singh has highlighted one particular case of a 7 year old boy, namely Anand, who is suffering from cancer. He too has been taken to Jhajjhar Facility, and his mother is residing at the night shelter. Having been separated from her son, she is refusing to eat any food. Mr. Varma has assured us that the case of Anand would be prioritised for him being shifted to the Trauma Centre at AIIMS. The said aspect shall be addressed within one day positively.

29. We also direct AIIMS to take individual, case by case, decisions with regard to the admission of any new COVID-19 patient from amongst the residents of the night shelter, whose results are yet to come. The aforesaid aspects taken not of by us should be kept in mind while deciding whether to grant them admission at the Trauma Centre at AIIMS, or at the Jhajjhar

Facility.

30. List on 10.06.2020.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

MAY 27, 2020

N.Khanna